



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

SAMUEL TIJUANA JONES,
Petitioner,

vs.

WARDEN, FCI EDGEFIELD,
Respondent.

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CIVIL ACTION NO. 4:08-3180-HFF-TER

ORDER

This case was filed as a 28 U.S.C. § 2241 action. Petitioner is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the petition for a writ of habeas corpus be dismissed without prejudice and without issuance and service of process upon Respondent. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on October 3, 2008, and the Clerk of Court entered Petitioner's objections to the Report on October 20, 2008.

In the Report, the Magistrate Judge took judicial notice that Petitioner's first § 2255 was pending with this Court. (Report 4.) Since the Report was filed, however, the Court has dismissed that petition, with the consent of Petitioner, on the basis that it was untimely filed. In that this dismissal *may* require a determination on the merits of Petitioner's claim, the Court will remand this action to the Magistrate Judge for further proceedings.*

Therefore, after a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court **REMANDS** this action to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

Signed this 22nd day of October, 2008, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

*The Court notes, however, that this remand is required by no fault of the Magistrate Judge.